

November 16, 2010

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth St., NW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WT Docket No.05-265

Dear Ms. Dortch:

On November 16, 2010, Harold Feld, Legal Director, and Rashmi Rangnath, Staff Attorney, Public Knowledge; Chris Riley, Policy Counsel, Free Press; Andrew Schwartzman, Senior Vice President and Policy Director, Media Access Project; and Parul Desai, Policy Counsel, Consumers Union (public interest representatives) met with the following Commission staff: Austin Schlick, Julie Veach, David Horowitz, and Andrea Kearney of the Office of General Counsel and Stacy Ferraro, Paul Murray, and Jennifer Salhus of the Wireless Telecommunications Bureau. The purpose of the meeting was to discuss the FCC's authority to regulate data roaming.

The public interest representatives posited that the Commission had ample authority to regulate data roaming. We explained that §332(c)(2) of the Communications Act was not a prohibition on Commission authority to regulate Private Mobile Radio Service (PMRS) as a common carrier service. The legislative history of the Omnibus Budget Reconciliation Act of 1993, that amended section 332 indicates that the purpose of the section was to apply principles of common carriage to new communications technologies. However, many of these new services, including PMRS, are not automatically designated as common carriers in order to relieve new entrants from certain onerous requirements that may come with that designation. But §332(c)(2) preserves the Commission's discretion to treat these services as common carrier services. The functional equivalence principle codified in section 332(d)(3) and the Commission's ability to forbear from applying common carrier obligations are examples of Congress' intent to give such broad discretionary authority to the Commission. Accordingly, the FCC could order licensees to offer data roaming as a common carrier service.

We also discussed alternative grounds upon which the Commission could regulate data roaming. Public interest representatives expressed concern that imposition of a duty to negotiate in good faith alone would not be sufficient to prevent large wireless service providers from discriminating against mid-sized providers that they saw as competitive threats.

Finally, we discussed whether data roaming could be regulated as telecommunications services. Public interest representatives explained that data roaming services essentially provide transport for data services offered to the public and as such are telecommunications services. The fact that they may also offer DNS look up, is insufficient to lead to the conclusion that data

roaming services are information services. Data roaming services are wholesale services comparable to special access services, which the Commission regulates as common carrier services even when the traffic carried is data from retail information services.

In accordance with 47 C.F.R. §1.1206, this letter is being filed electronically with your office today.

Respectfully submitted,

/s/
Rashmi Rangnath
Staff Attorney
Public Knowledge

Cc:

Austin Schlick
Julie Veach
David Horowitz
Andrea Kearney
Stacy Ferraro
Paul Murray
Jennifer Salhus